

# **NORTH OGDEN PLANNING COMMISSION**

## **MEETING MINUTES**

May 7, 2014

The North Ogden Planning Commission convened in a regular meeting on May 7, 2014 at 6:31 pm in the North Ogden City Municipal Building, 505 E. 2600 N. North Ogden, Utah. Notice of time, place and agenda of the meeting was furnished to each member of the Planning Commission, posted on the bulletin board at the municipal office and posted to the Utah State Website on May 2, 2014. Notice of the annual meeting schedule was published in the Standard-Examiner on January 24, 2014.

### **COMMISSIONERS:**

Eric Thomas	Chairman
Don Waite	Vice-Chairman
Scott Barker	Commissioner
Joan Brown	Commissioner
Blake Knight	Commissioner
Dee Russell	Commissioner
Phillip Swanson	Commissioner

### **STAFF:**

Jon Call	City Attorney
Gary Kerr	Building Official
Rob Scott	City Planner
Stacie Cain	Community Dev. Coord./Deputy City Recorder

### **VISITORS:**

Mike Norseth	Vic Bachman	Heber Beddes
Christian George	David Brimhall	Nathan Hall

### **REGULAR MEETING**

Chairman Thomas called the meeting to order at 6:31 pm. Commissioner Barker offered the invocation and led the audience in the Pledge of Allegiance.

### **CONSENT AGENDA**

- 1. CONSIDERATION TO APPROVE THE APRIL 16, 2014 PLANNING COMMISSION MEETING MINUTES.**

**Commissioner Brown made a motion to approve the consent agenda. Commissioner Swanson seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Russell</b>	<b>yes</b>
<b>Commissioner Swanson</b>	<b>yes</b>

**The motion passed.**

**ACTIVE AGENDA**

**1. PUBLIC COMMENTS.**

There were no public comments.

**2. CONSIDERATION TO APPROVE A CONDITIONAL USE PERMIT FOR A TEMPORARY BUSINESS TO SELL FIREWORKS AT APPROXIMATELY 2560 N. 400 E.**

Chairman Thomas stated the applicant is seeking to locate a fireworks tent in the Smith's parking lot. There was a general discussion regarding the proposed location of the tent with Commissioner Brown stating she is concerned about the location and asked if the tent could be moved closer to the Wendy's building where there is less traffic. Commissioner Swanson inquired as to why Commissioner Brown is concerned about the proposed location of the tent. Commissioner Brown stated there were many complaints regarding the traffic problems caused by the location of the tent. Chairman Thomas stated he feels the appropriate way of dealing with the safety concerns are to ask that the tent size be reduced. Commissioner Knight agreed and added that the applicant could be asked to use temporary signage directing pedestrian activity as well as to provide additional space in front of the tent to allow for adequate pedestrian areas. Chairman Thomas agreed and added that the applicant could be asked to provide a more detailed site plan. There was a brief discussion regarding the tent with a focus on the history of the location of the tent as well as a focus on other potential locations for the tent. Commissioner Knight stated he would like to see a more detailed site plan.

City Planner Scott suggested that the Planning Commission table this item to allow them additional time to consider any potential restrictions associated with the conditional use permit (CUP) and to give the applicant an opportunity to respond to the concerns raised by the body. Commissioner Knight stated that if Smith's is comfortable allowing the tent in their parking lot,

the only issue for the City to consider is public safety. Commissioner Brown stated she likes Chairman Thomas's suggestion that the applicant be asked to reduce the tent size. Commissioner Knight stated the dimensions of the tent may be included on a more detailed site plan.

**Commissioner Knight made a motion to continue this item until the next Planning Commission meeting. Commissioner Russell seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Russell</b>	<b>yes</b>
<b>Commissioner Swanson</b>	<b>yes</b>

**The motion passed.**

**3. DISCUSSION AND/OR ACTION TO APPROVE LEWIS PEAK SUBDIVISION PRUD LOT 26 BUILDING PLANS.**

Building Official Kerr stated that he has suggested that the applicant seek approval for the building plans for all lots in this phase in the project, but the applicant has chosen to apply for this lot individually, which means he will be required to come back to the Planning Commission for approval of future building plans unless he chooses to use one of the two previously approved building plans.

Mike Norseth, 1546 N. 775 E., stated he lives in Phase I of the project and he is one of the three board members that serves on the homeowners association (HOA) for the development. He stated a PRUD is a conditional use subdivision and all plans for the project must be approved by the Planning Commission before homes can be constructed; he is looking to the Planning Commission to approve a subdivision that is workable and meets the same architectural characteristics of the existing phase of the subdivision. He stated he has a meeting scheduled with Sierra Homes tomorrow morning and he will suggest that they provide building plans to the Planning Commission for the entire subdivision rather than submitting one house at a time. He noted homes in the subdivision range from 2,500 to 3,800 square feet and a range of colors; the existing homeowners love the feel of the development and they want to encourage the builder to continue with that theme to avoid the appearance of two separate subdivisions. He then addressed the building plans for lot 26 and noted it is his recommendation that the Planning Commission refuse to approve any additional building plans until the entire character of the subdivision is laid out and presented to the Planning Commission.

Vice-Chairman Waite stated that during the last discussion there was a focus on the percentage of siding permitted in the subdivision according to the covenants, conditions, and restrictions (CCRs) and he noted he drove through the subdivision and believes the percentage of siding allowed has already been exceeded. Mr. Norseth disagreed and stated the material Vice-Chairman Waite is referencing is likely hardy board and not siding.

Commissioner Knight stated it is his understanding that if a HOA is established and CCRs have been recorded for the development, the builder must receive approval of the plans by the HOA. Mr. Norseth stated the CCRs have been written for Phase I and they include a description of the Phase I envelope. There is a note that indicates that once the Planning Commission approves Phase II of the development it will also be subject to the CCRs developed for Phase I. At that point the builder will be required to present building plans to the architectural committee, but they have been ignoring that requirement to date. Commissioner Knight asked if the builder must receive approval from the HOA before the Planning Commission can approve the building plans. Mr. Kerr answered no and stated the City has no ability to enforce the CCRs for the development.

Commissioner Brown stated she respects what Mr. Norseth has said and she empathizes with his situation; she feels it would be advisable to table this item to give the builder the opportunity to meet with the HOA and then come to the City with a package detailing their plans for construction throughout the next phase of the subdivision. Mr. Norseth stated he is looking forward to his meeting with the builder tomorrow and he believes the HOA will be flexible throughout the negotiation process.

Chairman Thomas stated he does not understand why the Planning Commission is approving individual house plans. Mr. Scott stated staff would prefer the developer to provide a range of plans that can be approved for the development, but they are choosing to submit one house plan at a time for approval. He and Mr. Kerr then provided a brief explanation of the City defined process that requires Planning Commission approval of building plans. Chairman Thomas inquired as to what parameters the body should gauge the plans. Mr. Scott stated the Planning Commission is essentially creating guidelines for the next phase of the development. Commissioner Knight stated he does not believe the Planning Commission can do that adequately or effectively by reviewing building plans one-by-one. Chairman Thomas agreed and Mr. Scott stated he can communicate that to the developer. He asked if the Planning Commission would be comfortable approving the building plan that has been presented tonight, but informing the developer that they will not approve any additional individual plans and would, instead, prefer to approve a range of plans.

Commissioner Swanson asked if the developer is requesting approval of individual building plans to try to avoid the CCRs for the HOA. Mr. Kerr stated the developer was initially unaware that they were required to have their plans approved by the City; he informed them of this requirement after he issued a building permit for the last home constructed in phase one of the development. The developer has known for several months that they would need to have the plans for Phase II approved by the Planning Commission and he has suggested to them that they request approval for all plans at once rather than individually.

**Commissioner Knight made a motion to table this item until the next Planning Commission meeting and inform the developer that it would be more appropriate to submit for approval of all building plans at one time. Commissioner Brown seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Russell</b>	<b>yes</b>
<b>Commissioner Swanson</b>	<b>yes</b>

**The motion passed.**

**4. DISCUSSION TO AMEND NORTH OGDEN CITY ZONING ORDINANCE TITLE 11, TO ADD REGULATIONS REGARDING BEES.**

A staff memo from City Manager Chandler included a draft bee keeping ordinance and the “Utah Bee Inspection Act.” Please note that individuals keeping bees must comply with North Ogden’s ordinance and Utah’s bee inspection act. The following is a summary of the attached ordinance.

1. Beekeeping is permitted in all residential zones.
2. A maximum of five (5) hives is permitted on lots less than one-half (1/2) acre.
3. 10 hives are permitted on lots larger than one-half (1/2) acre.
4. Beekeepers must register with the State of Utah.
5. Hives must be located at least five feet (5’) from any property line.
6. Hives between five feet (5’) and fifteen feet (15’) must install a fly wall.
7. The beekeeper must provide water.

Mr. Chandler reviewed his staff memo and provided a brief overview of the content of the draft ordinance.

Commissioner Knight stated his concern is the number of hives that would be permitted on any given property in the City. He wondered if a person owning a larger parcel of property should be permitted more than 10 hives. Mr. Chandler stated the ordinance is written to allow a maximum of 10 hives as long as the property is greater than one half acre in size. Chairman Thomas stated many larger properties in the City are likely not in a residential zone and this ordinance may not apply to them.

Commissioner Brown questioned the requirement to provide a water source for the bees because bees will find a water source regardless. Mr. Chandler stated the ordinance does not imply that a water source will keep bees on the owners’ property; it simply dictates that a water source must be provided. He stated there is no mechanism to control bee flight.

Vic Bachman, Deseret Hive Supply in Ogden, provided the Planning Commission with information regarding his experience with bees and the reasons to include information in the ordinance regarding fly-way barriers and water sources. Bees will travel up to a 10-mile circumference around their hive and he reviewed the makeup of a bee colony and typical construction of a hive. He noted North Ogden's ordinance is one of the best he has seen after working with several other cities and entities. Mr. Chandler stated he was interested in the relationship between lot sizes and the number of hives allowed; he is concerned about the complaints the City may receive for allowing beehives on quarter-acre lots. Mr. Bachman stated bees will not disturb neighboring property owners, but he feels that the provisions of the ordinance that require hives to be placed a certain distance from an abutting property line will help to alleviate concerns and deter complaints.

Commissioner Swanson asked who is responsible to determine the exact location of a property line, especially in cases where there is no fence between two lots. Mr. Chandler noted the animal control division of the City will enforce this ordinance and it may be necessary to include language in the enforcement ordinance regarding the determination of the property line location. Commissioner Knight suggested that it will be up to the neighbor seeking to locate beehives on his property to determine the location of the property lines. Mr. Bachman added that education about bees is important; bees can only sting once before dying, but people often confuse bees with hornets and yellow jackets, which can both sting multiple times. There was then a general discussion regarding standard hive construction, which helps to ensure success and survivability of the bee colony. Mr. Chandler noted the definition in the City Code for hives was taken from State code and it is necessary to ensure that staff and those responsible to enforce the ordinance truly understand what a hive is. Mr. Bachman referenced the several different types of hives that are in general use and noted that most bee hobbyists only keep a couple of hives on their property; each hive contains its own colony with a queen bee.

Commissioner Brown referenced sub-item g in the draft ordinance which states: a hive shall be placed on property so the general flight pattern of bees is in a direction that will deter bee contact with humans and domesticated animals. She stated she does not feel that language is realistic and should not necessarily be included in the ordinance. Mr. Bachman stated that language is part of the flight path and dictates the orientation of the hive opening, which is a good thing. Commissioner Brown stated it is her understanding that bee hives are more successful when placed in the sun; this means the City cannot be too stringent on location requirements because some locations of a yard according to the distance requirements included in the ordinance would not be in direct sunlight.

Vice-Chairman Waite wondered if it is truly necessary to have an ordinance because it seems the City has done fine without one. Mr. Chandler stated that the ordinance would be helpful because if bee hives are not listed as a permitted use in the City's land use ordinance and the City receives a complaint about a hive, it must be removed or eliminated. Vice-Chairman Waite stated he would like the City's ordinance to include the bare minimum regulations and provisions and allow bee keepers to rely more heavily on State regulations. Mr. Chandler noted State law does not deal with land use issues, such as distances from property lines, the number of hives permitted based on lot size, flyways, etc. He stated he has no doubt that there will be complaints associated with permitting beehives in residential neighborhoods and the items included in the

City's Ordinance are meant to address those concerns. Vice-Chairman Waite stated that he would like to include definitions for some of the terms included in the ordinance, such as nuisances. Mr. Bachman relayed some personal experiences he has related to beekeeping and noted there are several great things that bees do for society.

Commissioner Brown suggested that the language regarding the flyway barrier be changed to make it less restrictive.

David Brimhall, 343 E. Elberta Drive, stated the proposed ordinance requires that the owner includes a name on the hive and he feels that is too restrictive because many hive components can constantly be in flux. Mr. Bachman stated State law dictates that the owners name be on the hive as well. Mr. Brimhall stated he is new to beekeeping and his hives are approximately eight feet from his property line; there is a fence between he and the neighboring property, which is a field. He stated a flyway barrier will be very inconvenient for him and he agreed with Commissioner Brown that it is appropriate to amend the language dealing with flyway barriers so that they are only required when a hive is located in close proximity to a sidewalk or street. He stated that in his case where there is no one on the other side of the fence he should not be required to follow the flyway barrier rules.

Nate Hall, owner of Deseret Hive Supply, stated that if it is necessary to have an ordinance he would also agree that the Planning Commission should carefully consider the language regarding flyway barriers; anywhere outside 10-feet of a beehive it would be nearly impossible for someone to detect the hive based solely on the presence of bees because the bees leave the hive and fly straight up. He stated he understands neighbors will have concerns about beehives, but the majority of beekeepers are very cognizant of their neighbors and will do everything they can to keep their bees from becoming a nuisance. He suggested that anyone interested in learning more about beekeeping read the book Backyard Beekeeper. Mr. Bachman stated Deseret Hive Supply also offers classes for people interested in becoming beekeepers.

The Planning Commission then had a general discussion about potential amendments to the draft ordinance after hearing information from the experts in beekeeping. There was a focus on the number of beehives that should be allowed on a property based on the property size. Mr. Chandler stated he will use the feedback from the Planning Commission and those that made comments and update the ordinance accordingly; a red-line version will be provided to the body at their next meeting, after which a public hearing can be scheduled.

## **5. DISCUSSION TO CONSIDER THE DEFINITION AND REGULATION OF BANK AND FINANCIAL INSTITUTION USES.**

A staff memo from City Planner Scott explained when the Planning Commission is acting as a recommending body to the City Council, it is acting in a legislative capacity and has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, requires compatibility with the general plan and existing codes. On February 5, 2014 the North

Ogden Planning Commission (NOPC) made a motion directing staff to prepare a title loan ordinance as requested by the City Council. On April 16, 2014 the North Ogden Planning Commission discussed the basis for establishing a title loan ordinance. The following issues were discussed:

- Establishing a separation requirement between title loans, community center, school, or other public gathering place, or sexually oriented business was deemed appropriate.
- A maximum number of businesses was not appropriate.
- The existing site plan and architectural standards are sufficient.
- Establishing standards for disclosure requirements that the title loan business must give to loan applicants is appropriate.

Staff has put together a draft ordinance based upon the above discussion. See Exhibit A.

#### EXISTING ZONING ORDINANCE LANGUAGE

##### 11-2-1 Definitions

LENDING INSTITUTION: Any bank, insurance company, savings and loan association, or any other person in the business of lending money or guaranteeing loans, any person obtaining, arranging or negotiating loans or guarantees as agent or broker, and any person in the business of buying or selling loans or instruments for the payment of money which are secured by title to or a security interest in real estate.

#### CONFORMANCE TO THE GENERAL PLAN

The following extracts from the General Plan apply to this consideration. Commercial Development North Ogden's goals and policies concerning commercial developments address the aesthetics and location of commercial developments. The desire of City officials is to provide an attractive, pleasing environment in which to shop or work within a commercial core. Enough vacant property exists in North Ogden to accommodate future commercial growth. In order to function efficiently, proposed commercial developments should be evaluated for adequate internal circulation for automobiles and pedestrians with limited access points to the major streets serving the developments. The focus of commercial development in North Ogden should be to provide services that support the resident population of the City and adjacent areas. Regional commercial centers would be inconsistent with citizen desires and the direction of this Plan.

#### Commercial Development

New commercial and other business development will enhance the community when meeting the objectives of the General Plan. An improved standard of function, quality, and appearance is expected by the citizens.

The memo provided the following summary of Planning Commission considerations:

- Is the proposed amendment consistent with the North Ogden City General Plan?
- Does the proposed use meet the requirements of the applicable City Ordinances?
- What new standards should be included in the new ordinance?

Staff recommends that the Planning Commission review the draft title loan ordinance. Based upon that discussion a final ordinance will be written and come back in a public hearing for

recommendation to the City Council for adoption.

Mr. Scott reviewed his staff memo and he and City Attorney Call reviewed the draft ordinance.

Vice-Chairman Waite asked if it is defensible to prohibit these types of lending institutions within a defined distance from a school. Mr. Call stated the idea behind zoning ordinances is the separation of uses. He feels the proposed ordinance is somewhat more progressive, but it is not as restrictive as the ordinance regarding tobacco specialty shops, which are prohibited within a certain distance of residential zones. He stated he feels this ordinance is a good middle ground. There was a general discussion regarding the definition of 'public gathering space', which is referenced in the ordinance; since the term is not clearly defined it will be up to the Administration to interpret the meaning. Vice-Chairman Waite stated it may be helpful to include language in the ordinance that provides examples of a public gathering space to avoid conflicts between staff and applicants.

Mr. Scott continued his review of the draft ordinance and there were brief general discussions regarding various sections of the ordinance. Commissioner Swanson asked if the City can require that fees charged by payday lending institutions be converted to an APR interest rate in order to make the patron of the business fully aware of the agreement they are entering into. Mr. Call stated that it may be problematic to require an interest rate be displayed on signage in the business because interest rates for payday lending institutions vary just as interest rates at traditional lending institutions. He stated he is not sure the State would allow the City to require that an interest rate be posted. Commissioner Brown suggested that staff follow up with the State to determine if the City could legally require the posting of interest rates. Chairman Thomas stated he wants the Planning Commission to do its part in looking out for the best interest of the citizen, but he does not want to create a discrimination situation against these types of businesses.

Commissioner Knight stated he feels staff has provided a good starting point for the Planning Commission to work from. Chairman Thomas agreed and stated a business's success is based on the public's demand for the services provided by the business. The Commission concluded they are ready to set a public hearing regarding the proposed ordinance; Mr. Scott stated he will proceed with that scheduling process. Mr. Call added that he feels the State is heavily and appropriately regulating payday lending institutions while providing a good amount of fairness. There was a brief discussion regarding the licensing requirements for payday lending companies at the State level.

## **6. PUBLIC COMMENTS.**

Heber Beddes, 942 E. 1500 N., stated he was present this evening to hear information about the Lewis Peak subdivision agenda item. He stated he is curious about the required distance from the street to the rear property line and noted he does not feel that it will be possible to fit a home on the area available. He added a new home will obstruct his view and it is a taller home. Commissioner Knight stated those types of issues are addressed by the City's subdivision

ordinance and Chairman Thomas encouraged Mr. Beddes to attend the next Planning Commission meeting because the item was tabled to that meeting.

Brent Taylor, 180 W 1825 N, thanked the Planning Commission for the work they are doing for the City and stated he and the Council are looking forward to meeting with the Planning Commission tomorrow evening in a joint meeting to discuss the process for updating the City's General Plan. He concluded the City is lucky to have a great Planning Commission.

## **7. PLANNING COMMISSION/STAFF COMMENTS.**

Mr. Scott reported the City's application for grant funding to assist in the General Plan update was not approved and it will be necessary for the Administration to determine how to fund the project.

Commissioner Brown stated she recently had a conversation with Mr. Kerr regarding the renewal of a permit for a garage business in the City; she stated that she feels the existing garage businesses should be grandfathered under the existing ordinance and a new ordinance should be adopted prohibiting any additional similar businesses. She stated Mr. Kerr indicated that he does not think there should be any garage businesses in the City and she suggested that the issue be discussed further in depth by the Planning Commission. She stated the issue has been very contentious in the past and she would like to do whatever possible to prevent that from occurring again. Chairman Thomas stated that the subject is very contentious, but the City must be fair to all property owners. There was a general discussion regarding the City's regulations regarding home based businesses with Commissioner Swanson stating he feels one of the Planning Commission's highest priorities should be protecting residential areas of the City and allowing them to remain residential because that is why people move to the City. Chairman Thomas asked that staff add an item to a future agenda to discuss this issue.

Commissioner Brown then asked if the assisted living on the Barrett property is still progressing. Chairman Thomas stated he has been informed Mr. Barrett will submit an application for that component of the overall project.

Commissioner Brown stated that she understands the difference between e-cigarettes and tobacco, but she does not feel the City's ordinances address e-cigarettes though they are being sold at tobacco shops in the City. Mr. Call stated the State Code pertaining to tobacco is very much in flux at this time and at this point it would not make sense to address the issue until the State has taken a stance. Vice-Chairman Waite stated that it is his opinion that as e-cigarettes become more mainstream the smaller specialty stores will eventually go out of business.

Staff and Planning Commission then had a brief discussion about a few projects currently underway in the City.

Chairman Thomas asked staff to try to address the problems associated with people making a left turn onto Washington Boulevard out of the Lee's parking lot.

**8. ADJOURNMENT.**

**Commissioner Swanson made a motion to adjourn the meeting. Commissioner Brown seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Russell</b>	<b>yes</b>
<b>Commissioner Swanson</b>	<b>yes</b>

**The motion passed.**

The meeting adjourned at 8:29 pm.

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Planning Commission Chair

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Stacie Cain,  
Community Dev. Coord./Deputy City Recorder

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Date approved